INTERIOR BOARD OF INDIAN APPEALS

Paul G. Siegfried v. Billings Area Director, Bureau of Indian Affairs

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF

PAUL G. SIEGFRIED

v.

AREA DIRECTOR, BILLINGS, ET AL.

IBIA 74-39-A Decided December 9, 1974

Appeal from an administrative decision of the Area Director, Billings, January 30, 1974, canceling Siegfried business lease No. 0257-13-64 Northern Cheyenne Reservation Montana.

Reversed and remanded.

1. Indian Lands: Leases and Permits: Long-term Business: Official Representations

   No issue of estoppel can be raised where Federal officers make correct representations relied upon by third persons, and later the officials reverse themselves taking an incorrect position upon which no reliance is placed.

2. Indian Lands: Leases and Permits: Long-term Business: Option for Extension

When a bilateral lease contract includes an option for extension, it is not necessary to find a separate identifiable consideration for the option.

3. Indian Lands: Leases and Permits: Long-term Business: Cancellation

Failure to use a leasehold for the purpose specified in the lease, does not constitute a breach of the lease terms sufficient to justify cancellation of the lease in absence of a showing on the record of detriment to the landowners or the leasehold.

APPEARANCES: Richard J. Carstensen, Attorney, Billings, Montana, for appellant; Bertram E. Hirsch, Attorney, Association on American Indian Affairs, Inc., New York, New York, for Martha Whitecrane, Joseph Walksalong, Moses Yellowrobe and Carol Whitewolf, appellees.

NO APPEARANCES: Jeanette Linesbigler and Nancy Limberhand, lessors; Area Director.

OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

Lease No. 0257-13-64 dated October 21, 1963, between "William Yellowrobe Estate" Allottee No. 1440, of the Northern Cheyenne Tribe, lessor, and Paul G. Siegfried, lessee, covering a portion of allotment No. 1440, containing 8.5 acres was executed November 26, 1963. The Acting Superintendent of the Northern Cheyenne Indian Reservation, R. E. McLean, signed the lease in his official capacity in behalf of the heirs of the beneficial interest in the allotment, citing as his authority "Ath. IAM 54 5.3 (CFR 131.2(a)(4)," and he also approved it as the Acting Superintendent on the same date. The effective date of the lease term was February 1, 1964, for a period of ten years "W/option to renew another ten years." The lease rental was by its terms subject to review for adjustment of fair market rental at the end of the first five-year period to the then prevailing fair market rental. The initial rental was $100 per year, and a bond in the amount of $100 was required.

The stated purpose of the lease was "for location of saw mill, mill pond, log and lumber storage space, waste disposal unit, and other buildings needed to house operational equipment, subject to provisions stipulated in this lease form." The rental was based upon an August 26, 1963, appraisal by the Bureau of Indian Affairs and was revised to $125 per year by a second appraisal dated November 30, 1970, effective the year 1971. The bond for the new rental and all rentals accrued in the interim have been paid.

The regulation cited as authority for execution of the lease is 25 CFR 131.2(a)(4). By the regulation the Secretary may grant leases on individually owned land on behalf of:

> * * * (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees;* * *

In this case none of the Indian owners of the beneficial interest in the allotment was using any portion of the allotment.

Prior to the execution of the lease on July 11, 1963, the Superintendent had issued a notice to each individual owner of a beneficial interest:

> This is to advise you that allotment No. 1440, William Yellowrobe of which you hold an (stated interest) undivided interest, is available for a business lease on February 1, 1964, not to exceed a ten year period. You, therefore, have 90 days in which to negotiate and lease this property to a reliable lessee acceptable to this office.
>
> * * * * * *
>
> If, after this 90 day period the heirs have not presented to this office an acceptable lease, this office will execute a lease in accordance with and pursuant to the act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 380). This act authorizes the superintendent to execute a lease at the highest rental attainable without the consent of the land owners. (Emphasis supplied)

The record shows that allotment No. 1440 encompassed a total of 55 acres of land, more or less.

The appellant lessee herein had been in possession of that portion of the allotment used as the saw mill site under leases dating back to 1959, or possibly earlier. In addition, he had admittedly erected a residence on the property which he occupied for some years. Upon its destruction by fire he rebuilt, and is currently occupying the same under the current lease of 8.5 acres. The record does not disclose that the heirs to whom the notice was sent ever obtained a lessee for this or any other portion of the allotment.

On January 30, 1974, the Area Director notified the appellant that the lease was canceled and the provision contained in the lease giving an option for an additional 10-year period was invalid for the reason that the Acting Superintendent had no authority to sign or approve such a lease under his delegations of authority; and that in executing the lease he had violated the authorization issued by the Superintendent which limited the lease, "* * * not to exceed a 10 year period." The Area Director further indicated that the action of the Acting Superintendent was contrary to statute and regulation without citing any supporting reason or authority for his ruling.

We cannot agree with the decision of the Area Director.

[1] The appellant alleges in his brief that at dates and times prior to the January 30, 1974, notice of cancellation, the Superintendent, the Area Director and the Field Solicitor had upon occasion by letter and other communication led the appellant to believe that the option for the second ten-year term was valid; and that the option would be honored in the event the appellant chose to retain possession. The appellant goes to considerable length in his brief arguing that the Superintendent, the Area Director and the Government are estopped by these representations from reversing the prior declaration. This argument is answered at length by the appellees in their brief.

It is our conclusion that estoppel is not involved as an issue in this case. The record includes a memorandum to the Area Director from the Commissioner of Indian Affairs dated January 7, 1974, where it is stated:

> It is noted that the decision to cancel the lease effective January 31, 1974, was predicated upon the premise that the Acting Superintendent did not have the authority on November 26, 1963, to approve a business lease for a term of 10 years with the option to renew for another 10 years. Our records do not support this position. Billings Area Redelegation Order No. 1 of January 12, 1955 (20 FR 277) authorized the Superintendents to approve business leases pursuant to 25 CFR 171 (now CFR 131).

An examination of the citation given to the Federal Register in the Commissioner's memorandum supports this ruling, and no conflicting authority appearing, the Commissioner's statement shall be taken as

correct. It is further noted that it gives the Acting Superintendent the full authority of the Superintendent, and this we also find to be correct on this record on the following basis. In Nofire v. United States, 164 U.S. 657 (1897) it became critical to determine whether or not a deceased murder victim had been adopted by the Cherokee Indians to make him a Cherokee citizen. The marriage of the victim to a Cherokee woman was considered a part of the controlling evidence. The endorsement of that marriage upon the official records of the Cherokee Nation by an employee in the office of the clerk rather than by the clerk or his deputy was discussed by the Court as follows:

> T. W. Triplett was the clerk of the Tahlequah district at the date of this certificate. R. M. Dennenberg was his deputy, but at the time of the issue of the license both the clerk and his deputy were absent, and the signature of the deputy was signed by John C. Dennenberg, his son. The clerk, the deputy, and his son each testified that the latter was authorized to sign the name of the clerk or the deputy in the absence of either, and that the business of the office was largely transacted by this young man, although not a regularly appointed deputy. He made quarterly reports, fixed up records, and issued scrip, and his action in these respects was recognized by the clerk and the Nation as valid. * * * The circuit court said that the evidence was insufficient to show that fact, and that, therefore, that court had jurisdiction.
>
> With this conclusion we are unable to concur. The fact that an official marriage license was issued carries with it a presumption that all statutory prerequisites thereto had been complied with. This is the general rule in respect to official action, and one who claims that any such prerequisite did not exist must affirmatively show the fact. * * * (Citations of authority omitted)

Nofire v. United States, supra, is cited in 63 Am. Jur. 2.d 496 in support of the statement by the author:

> An act in the name of an officer by another person who is not a deputy, but who was in sole charge of the office, transacting the business, with the permission of the officer and the deputy, is that of an officer de facto.

Nofire, supra, is also cited with approval by the court in United States v. 15.3 Acres of Land, Etc., 154 F. Supp. 770, 787 (D.C. Pa. 1957) in the footnote.

On the basis of the foregoing authority it is our conclusion that an Acting Superintendent may perform the functions and exercise authority of a Superintendent, absent specific limitations placed upon him and made known to third parties relying upon his actions.

In this connection note is taken of the fact that the Superintendent's memorandum notice to the heirs dated July 11, 1963, gave them notice to produce a lease to the entire allotment whereas at a much later date on November 26, 1963, the Acting Superintendent signed for the heirs and approved for the Secretary that lease dated October 21, 1963, which covers only a portion of the allotment. We are not willing to presume that the Superintendent's July 11 notice was an "order" or that it had continuing effect on November 26,

which would limit the authority of the Acting Superintendent and render invalid the lease option for an additional 10-year term.

[2] The appellees in their brief raise a point of lack of consideration for the option. This issue can be disposed of upon the observation that the lease agreement includes a number of covenants bilateral and material in character. It is our conclusion that the matter is governed by the rule set forth in The Restatement of the Law of Contracts, (1932), which is,

> § 83. ONE CONSIDERATION FOR A NUMBER OF PROMISES.
>
> Consideration is sufficient for as many promises as are bargained for and given in exchange for it if it would be sufficient
>
> (a) for each one of them if that alone were bargained for, or
> (b) for at least one of them, and its insufficiency as consideration for any of the others is due solely to the fact that it is itself a promise for which the return promise would not be a sufficient consideration.

In reviewing the record before us we find no difficulty in arriving at the finding that the appellant herein elected to exercise the option to extend the lease for a second ten-year period. On January 21, 1974, prior to the cancellation notice, the appellant's attorney addressed a letter to the Area Director in which he indicated the agreement of the appellant to a reappraisal of the rental value, and he indicated further that in view of the fact that lessors wished

to terminate the lease the appellants were willing to negotiate a new lease for a period shorter than the 10 years mentioned in the option at a new and increased rate. This offer is a continuing offer since it is repeated in the appellant's reply brief. Nothing herein should be taken as a bar to further negotiations on the appellant's offer. In no event, however, should the lease be continued at the same rental rate as is currently provided without a supplemental appraisal of the fair rental value.

In addition to the other matters mentioned heretofore, appellee alleged breaches of the lease materially sufficient to justify a cancellation by the Superintendent. The record does not support the allegation of nonpayment of rent or failure to file the rent bond, but if any delinquencies do exist they should be cured immediately.

[3] The appellees allege that the appellant has breached the lease by failing to conduct the sawmill business specified as the purpose of the lease, but they failed to indicate in what manner this may constitute a detriment to them as owners or to the leasehold. This matter, if it constitutes a breach, is not sufficiently established in the record at this point to justify cancellation of the lease.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR

4.1 and 211 DM 13.7 (December 14, 1973), it is hereby ORDERED: the decision of the Area Director issued January 30, 1974, canceling business lease no. 0257-13-64 is hereby REVERSED and this matter is hereby REMANDED to the Area Director for further proceedings in accordance with the findings herein.

This decision is final for the department.

//original signed
David J. McKee
Chief Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge